

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DONALD EDWARD FLYNN,

Petitioner,

v.

Case Number 10-13906
Honorable Thomas L. Ludington

WAYNE COUNTY JAIL,

Respondent.

ORDER DENYING PETITIONER'S MOTION
FOR UNLAWFUL INCARCERATION

Petitioner Donald Edward Flynn filed a pro se habeas corpus petition in this Court on September 30, 2010. The petition challenged Petitioner's Wayne County conviction for aggravated indecent exposure, Mich. Comp. Laws § 750.335a(2)(b). Petitioner appeared to allege that the prosecution did not prove its case beyond a reasonable doubt and that his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), and under the Ninth Amendment were violated. On October 29, 2010, the Court dismissed the petition without prejudice because Petitioner had not exhausted state court remedies for his claims, as required by 28 U.S.C. § 2254(b)(1). In fact, his criminal case was still pending before the Michigan Court of Appeals.

Currently pending before the Court is Petitioner's motion for unlawful incarceration. The motion is barely legible, but one thing is clear: Petitioner is seeking \$15,000 in damages for every day of his incarceration.

"[D]amages are not an available habeas remedy." *Nelson v. Campbell*, 541 U.S. 637, 646 (2004); accord *Muhammad v. Close*, 540 U.S. 749, 750-51 (2004) (*per curiam* opinion recognizing

that damages are unavailable in habeas); *Wolff v. McDonnell*, 418 U.S. 539, 554 (1974) (acknowledging that “habeas corpus is not an appropriate or available remedy for damages claims”).

Moreover, it appears that his case is still pending before the Michigan Court of Appeals.

Accordingly, it is **ORDERED** that the motion for unlawful incarceration [Dkt. #7] is **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: July 12, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on Donald Flynn, #2010010426, 570 Clinton St., Detroit, MI 48226 on July 12, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS

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